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Appeals Court Undercuts Trump's Legacy of Deregulation in Striking Down Administration's EPA Carbon Rule

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BY **JERRY LAMBE**

Jan 19th, 2021

On his final full day in the Oval Office, President **Donald Trump's** deregulatory agenda suffered a serious blow as a federal appeals court ruled that the administration's pro-industry Affordable Clean Energy (ACE) rule for carbon emissions violated federal law.

The ACE rule replaced the Obama administration's 2015 Clean Power Plan (CPP)—which aimed for a 30-percent reduction in power plant carbon dioxide emissions by 2030 by requiring states to implement individualized plans. The ACE Rule, on the other hand, was a major facet of the Trump administration's anti-regulation platform, effectively allowing states to set their own standards in deciding how to regulate carbon emissions. The Trump administration's rule would have prolonged the life of highly pollutive coal-fired power plants indefinitely.

But a three-judge panel on the U.S. Court of Appeals for the District of Columbia struck down the rule, remanding it back to the Environmental Protection Agency (EPA), thus allowing the incoming Biden administration to rewrite the emissions regulation from scratch.

"The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule as a means of regulating power plants' emissions of greenhouse gases. It did not," the per curium opinion stated. "Although the EPA has the legal authority to adopt rules regulating those emissions, the central operative terms of the ACE Rule and the repeal of its predecessor rule, the Clean Power Plan hinged on a fundamental misconstruction of Section 7411(d) of the Clean Air Act. In addition, the ACE Rule's amendment of the regulatory framework to slow the process for reduction of emissions is arbitrary and capricious."

The court also noted that the agency's own analysis revealed that the ACE rule was only projected to reduce carbon emissions by less than one-percent by 2030.

"The EPA did not even hint at how or whether it determined that prolonging public exposure to ongoing harms from pollutants emitted by existing source categories could be justified consistent with the core objectives of the Clean Air Act. That failure is irrational, especially in the face of the EPA's continued adherence to its 2015 finding of an urgent need to counteract the threats posed by unregulated carbon dioxide emissions from coal-fired power plants. The EPA made no mention whatsoever of the harms that Petitioners warned would result if the Agency slackened the pace of state and federal action to mitigate the harms Section 7411(d) targets," the court wrote.

"The EPA offered what is at best a radically incomplete explanation for extending the compliance timeline. It offered undeveloped reasons of administrative convenience and regulatory symmetry, even as it ignored the

environmental and public health effects of the Rule's compliance slowdown. The EPA thus 'failed to consider an important aspect of the problem,'—indeed, arguably the most important aspect.”

The order stems from multiple lawsuits filed against the Trump administration by environmental groups, clean energy companies, and blue cities and states who argued that the replacing the Obama-era rule with Trump's plan was unlawful. The appeals court in October heard more than eight hours of oral arguments before issuing Tuesday's 185-page opinion.

U.S. District Judges **Patricia Ann Millett** and **Cornelia T.L. Pillared**—both appointed by President **Barack Obama**—sided with the environmental groups. Trump-appointee **Justin Walker** concurred in the judgment in part and dissented in part.

Court Voids a 'Tortured' Trump Climate Rollback

The ruling strikes down weak rules for coal-burning power plants and gives the Biden administration a freer hand to impose tighter restrictions.

<https://www.nytimes.com/2021/01/19/climate/trump-climate-change.html>

By Lisa Friedman

- Jan. 19, 2021

WASHINGTON — A federal appeals court on Tuesday struck down the Trump administration's plan to relax restrictions on greenhouse gas emissions from power plants, paving the way for President-elect Joseph R. Biden Jr. to enact new and stronger restrictions on power plants.

The United States Court of Appeals for the District of Columbia called the Trump administration's Affordable Clean Energy rule a “fundamental misconstruction” of the nation's environmental laws, devised through a “tortured series of misleadings” of legal statute.

On the last full day of the Trump presidency, it effectively ended the Environmental Protection Agency's efforts to weaken and undermine climate change policies and capped a dismal string of failures in which courts threw out one deregulation after another. Experts have widely described the E.P.A.'s losing streak as one of the worst legal records of the agency in modern history.

The appeals court did not reinstate a 2015 regulation that President Barack Obama's E.P.A. had enacted, which would have forced utilities to move away from coal and toward renewable energy to reduce emissions. But it rejected the Trump administration's attempt to repeal and replace that rule with a toothless one.

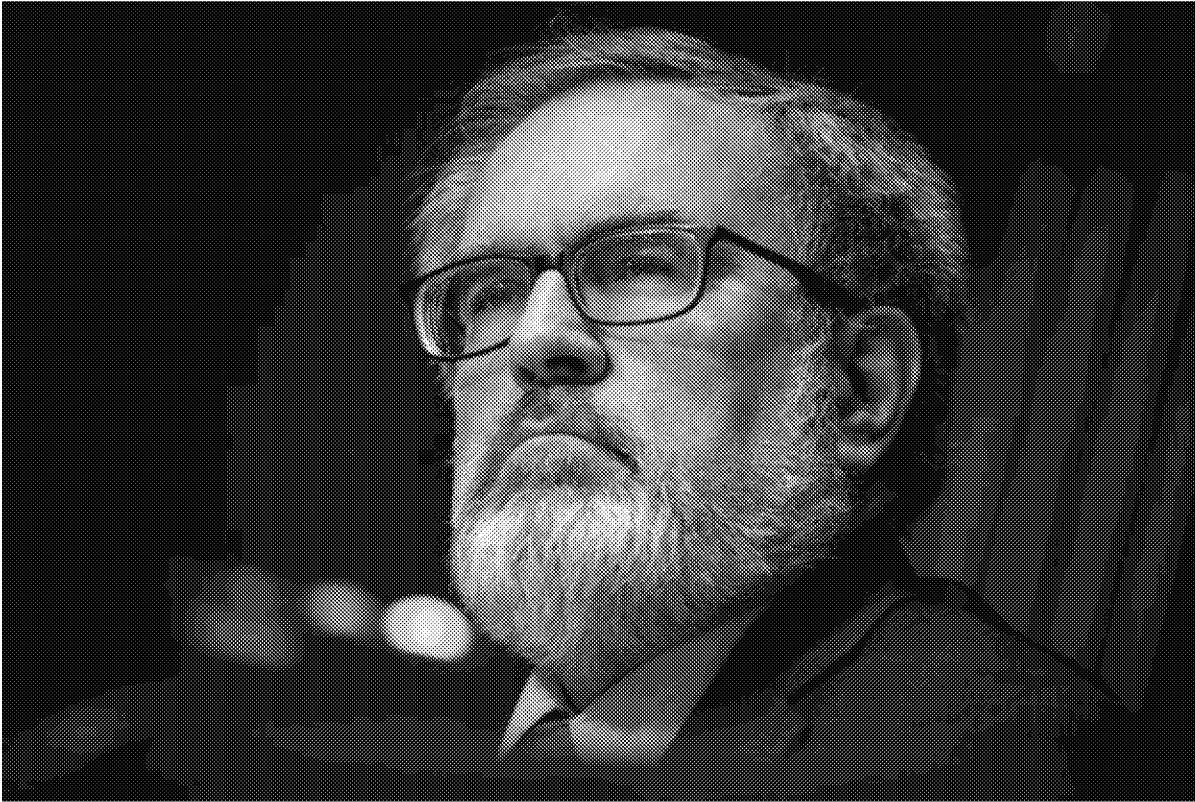
Judges eviscerated the Trump administration's core argument: that the only possible way to interpret the Clean Air Act of 1970 is that the federal government does not have the authority to set national restrictions on emissions or force states to move away from fossil fuel power. That argument that would have prevented Mr. Biden or any future administration from tackling climate change from power plants without an explicit new law from Congress.

The Trump administration, the judges said, “may not shirk its responsibility by imagining new limitations that the plain language of the statute does not clearly require.”

Molly Block, a spokeswoman for the E.P.A., said the Trump administration was disappointed in the ruling and said it “risks injecting more uncertainty at a time when the nation needs regulatory stability.”

Environmental groups and legal experts saw the decision as a vindication of the argument that the government does have the authority to tackle climate change.

“It’s a massive win,” said Jody Freeman, a professor of environmental law at Harvard University who served as an adviser to the Obama administration.



Andrew Wheeler, the departing E.P.A administrator. An agency spokeswoman said the ruling “risks injecting more uncertainty at a time when the nation needs regulatory stability.” Credit...Pool photo by Al Drago

A core promise of the Biden campaign was to eliminate fossil fuel emissions from the power sector by 2035. With Tuesday’s ruling, the Biden administration will not have to wait for the legal fight over the Trump rule to play out before deciding whether or how to use regulation to tackle climate change, Ms. Freeman said. Instead, she said, the Biden E.P.A. can “go on the offense” immediately.

“The real win here is that the Trump administration failed to tie the Biden team’s hands,” Ms. Freeman said. “They wanted to lock in a narrow legal interpretation and make it impossible for a new administration to set ambitious standards for power plants. That was their whole strategy. And it went down to spectacular defeat.”

In 2015 the Obama administration enacted the Clean Power Plan, which aimed to cut emissions from the power sector 32 percent by 2030 compared to 2005 levels. To do so, it instructed every state to draft plans to eliminate carbon emissions from power plants by phasing out coal and increasing the generation of renewable energy.

The measure never went into effect. The Supreme Court in 2016 said states did not have to comply until a barrage of lawsuits from conservative states and the coal industry had been resolved. Shortly after the election of President Trump, his E.P.A. repealed the Clean Power Plan.

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Andrew Wheeler, the departing administrator of the E.P.A. and a former coal lobbyist, replaced the plan with the weaker Affordable Clean Energy rule, which maintained the law only allows the agency to set guidelines to reduce emissions at individual power plants with actions like increasing efficiency or upgrading boilers that do not threaten an entire power sector, such as coal.

Alex Flint, executive director of the Alliance for Market Solutions, a conservative group that advocates for a carbon tax, said the ruling created “a mess” for the owners of power plants, steel mills, cement kilns and other polluting industries.

“One administration pushes rules in one direction, and the next pushes them in the other. Then, a court throws out the rules. It is impossible to make efficient long-term decisions,” he said.

He called for Congress to put a price on emissions “so that polluters can decide whether to continue operations and pay the cost of doing so or change their operations.”

Ms. Freeman said the administration could attempt some last-minute filings in the next 24 hours but saw their chances of success as very low.

Whether Mr. Biden will seek to again use regulation to curb power plant emissions is still being debated. Tuesday’s ruling, legal experts said, did not give him approval to do so, but it did give him the leeway to try. Any new effort would certainly be challenged by conservatives and would very likely face an uncertain future before the Supreme Court.

A spokesman for the Biden transition team did not immediately respond to a request for comment.

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